

WHITE *v.* TEXAS.

CERTIORARI TO THE COURT OF CRIMINAL APPEALS OF TEXAS.

No. 87. Argued May 20, 1940.—Decided May 27, 1940.

1. Use in a state court of a coerced confession in procuring a conviction of a capital crime violates the due process clause of the Fourteenth Amendment. P. 531.
 2. The evidence shows that the confession used in the trial of this case was coerced. P. 532.
- Petition denied.

On a petition by the State of Texas for the rehearing of a case adjudged March 25, 1940, 309 U. S. 631, reversing a death sentence upon a conviction of rape.

Mr. F. S. K. Whittaker, with whom *Mr. Carter Wesley* was on the brief, for petitioner.

Messrs. Lloyd Davidson and *William J. Fanning*, Assistant Attorney General of Texas, with whom *Messrs. Gerald C. Mann*, Attorney General, *George W. Barcus*, Assistant Attorney General, and *W. C. McClain* were on the brief, for respondent.

MR. JUSTICE BLACK delivered the opinion of the Court.

Petitioner was convicted of rape and sentenced to death in the District Court of Montgomery County, Texas. The State's appellate criminal court of last resort affirmed and denied rehearing.¹ We declined to grant certiorari to review the state court's action, 308 U. S. 608. February 29, 1940, petitioner sought rehearing of his petition for certiorari, alleging that his conviction and sentence resulted from proceedings in which the State had utilized an alleged confession in violation of the Due Process Clause of the Fourteenth Amendment. March 25, 1940, we granted certiorari, and reversed the judgment of the state court,

¹ 139 Tex. Crim. Rep. —; 128 S. W. 2d 51. A prior conviction was reversed. 135 Tex. Crim. Rep. 210; 117 S. W. 2d 450.

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309 U. S. 631, upon authority of *Chambers v. Florida*, 309 U. S. 227, and *Canty v. Alabama*, 309 U. S. 629. The case is before us now on the State's petition for rehearing.²

From the first offer of the alleged confession in evidence at the trial, petitioner has challenged the State's right to utilize it, consistently with rights guaranteed him by the Federal Constitution.³ In affirming the conviction and sentence of death, the court below necessarily determined that use of the confession did not constitute a denial of that due process which the Fourteenth Amendment guarantees.

The State suggests that there is evidence that petitioner denied ever having made or signed the confession which purported to be signed by his mark. Therefore, it insists

² Petitioner's original petition for certiorari was denied November 13, 1939, 308 U. S. 608. On February 29, 1940, after our decision in the *Chambers* case, petitioner filed a petition for rehearing of his original petition, assigning the additional ground that his conviction was attributable to the use by the State of a confession obtained by coercion and intimidation. March 2, 1940, the Attorney General of Texas was notified of the pendency of the petition for rehearing and he has informed the Clerk of this Court that he notified the State's Appellate Criminal Attorney. Information of pendency of the petition for rehearing of the petition for certiorari was also communicated to the Montgomery County District Court Clerk, the District Attorney, the Governor and the State Board of Pardons and Paroles. The State's petition for rehearing of our judgment of March 25, 1940, reversing the state court's judgment, alleged that the State had not received adequate notice and sought further opportunity to present the State's views. We therefore heard oral arguments upon the State's petition for rehearing.

³ In addition to alleging that the confession relied on by the State was coerced and involuntary, both petitioner's amended motion for a new trial and his bill of exceptions to the court below set out that he "was not permitted to talk to an attorney to advise him but was kept incommunicado, was not permitted to use a telephone, was kept in the woods by Rangers a great portion of the time and was denied every right that even this defendant is entitled to under the Constitution of Texas and the Constitution of the United States."

that petitioner is barred from urging that the prosecution's use of the confession could have deprived him of due process at his trial. But regardless of petitioner's testimony on this question, the State insisted and offered testimony to establish that the confession was signed by him, and upon this evidence the confession was submitted to the jury for the purpose of obtaining his conviction. Since, therefore, the confession was presented by the State to the jury as that of petitioner, we must determine whether the record shows that, if signed at all, the confession was obtained and used in such manner that petitioner's trial fell short of that procedural due process guaranteed by the Constitution.

Petitioner is an illiterate farmhand who was engaged, at the time of his arrest, upon a plantation about ten miles from Livingston, Texas. On the day following the crime with which he has been charged, he was called from the field in which he was picking cotton and was taken to the house of the brother-in-law of the prosecutrix, the victim of the crime, where fifteen or sixteen negroes of the vicinity were at the time in custody without warrants or the filing of charges. Taken to the county court house, and thence to the Polk County jail, petitioner was kept there six or seven days. According to his testimony, armed Texas Rangers on several successive nights took him handcuffed from the jail "up in the woods somewhere," whipped him, asked him each time about a confession and warned him not to speak to any one about the nightly trips to the woods. During the period of his arrest up to and including the signing of the alleged confession, petitioner had no lawyer, no charges were filed against him and he was out of touch with friends or relatives.

There were denials that petitioner was ever physically mistreated or abused. But the Rangers and a local peace officer, identified by petitioner as the officers who took

him on the night trips to the woods and there whipped him, did not specifically deny that he was taken out of jail, at night, and interrogated in the woods. This local peace officer wasn't sure "how many times" the prisoner was removed from jail, and one Ranger re-stated his testimony given at the first trial that he "took him out so many times" the exact number could not be recalled. The prisoner was taken out of jail, driven "out on the road" and then "out off of the road," as this Ranger testified, in order that the officers could talk to him and because the jail was crowded. In jail, the Sheriff put petitioner by himself and "kept watching him and talking to him."

Before carrying petitioner to Beaumont, where the alleged confession was taken, the Sheriff talked about an hour and a half with him. The Rangers who had been taking petitioner to the woods at night knew the county attorney was going to Beaumont to get a statement; they, too, went there and were in and out of the eighth floor room of the jail in Beaumont, with the elevator locked, where petitioner was interrogated from approximately 11: 00 P. M. to 3: 00 or 3: 30 A. M. The alleged confession was reduced to writing after 2 A. M. Immediately before it was taken down, the prisoner was repeatedly asked by the private prosecutor whether he was ready to confess. Petitioner then began to cry, and the typing of the confession, upon which the State's case substantially rested, was completed by the county attorney about daylight. Two citizens of Beaumont signed it as witnesses.

"Due process of law, preserved for all by our Constitution, commands that no such practice as that disclosed by this record shall send any accused to his death."⁴

The State's petition for rehearing is

Denied.

⁴ *Chambers v. Florida*, 309 U. S. 227, 241; *Canty v. Alabama*, 309 U. S. 629.